

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

TOMMY HENDERSON,
ADC #93098

PLAINTIFF

v.

5:06CV00296SWW/HDY

ARKANSAS DEPARTMENT
OF CORRECTION, et al.

DEFENDANTS

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Court Judge Susan Webber Wright. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than eleven (11) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.

2. Why the evidence proffered at the hearing before the District Judge (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The detail of any testimony desired to be introduced at the hearing before the District Judge in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and "Statement of Necessity" to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite 402
Little Rock, AR 72201-3325

DISPOSITION

By Order dated December 20, 2006 (DE #9), this Court granted plaintiff's application to proceed in forma pauperis in this action filed pursuant to 42 U.S.C. § 1983. The Court also directed plaintiff to file an amended complaint within thirty days of the date of that Order. However, subsequent to that Order, this Court has discovered that plaintiff is not eligible to proceed in forma pauperis under the terms of the Prison Litigation Reform Act (PLRA), 28 U.S.C. § 1915(g), due to plaintiff's status as a "three-striker."

The Court is required to screen complaints seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. §1915(a). Additionally, the PLRA provides that "[i]n no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on three (3) or more prior occasions,

while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury."

The Court notes that plaintiff has had three prior complaints dismissed as frivolous and/or for failure to state a claim. See Henderson v. Miller, 95-5082 (July 12, 1995) (W.D.AR), Henderson v. Keith, 95-5041 (April 24, 1995) (W.D.AR), and Henderson v. Johnson, 4:05cv01315 (January 4, 2006) (E.D.AR).

In the present complaint and amended complaint, plaintiff alleges issues of retaliation, improper meals, legal mail, improper library rules, medical care of diabetic patients and miscellaneous conditions complaints such as a leaky roof, insufficient television access, etc. However, none of plaintiff's allegations fall within the imminent danger exception to the "three-strikes" rule. Accordingly,

IT IS, THEREFORE, RECOMMENDED that this Court's December 20, 2006 Order granting plaintiff's application to proceed in forma pauperis be REVOKED,¹ and plaintiff's complaint be DISMISSED without prejudice. Should plaintiff wish to continue this case, he shall submit the statutory filing fee of \$350 to the Clerk, noting the above case style and number within ten (10) days of the date of this Order, along with a motion to reopen the case. Upon receipt of the motion and full payment, the case will be reopened. Any amounts of money which already have

¹

See Boreland v. Vaughn, 2000 WL 254313 (E.D.PA 2000) and Turner-El v. Washington, 1998 WL 566880 (N.D.IL 1998), where the courts revoked prior decisions granting in forma pauperis applications after discovering the inmates' three-strikes status.

been deducted from plaintiff's inmate account, pursuant to the December 20, 2006 Order, should be refunded to plaintiff's account.

IT IS SO RECOMMENDED this 23 day of January, 2007.

A handwritten signature in black ink, reading "H. Daniel Young". The signature is written in a cursive, flowing style. The "H" is large and stylized, and the "Young" is written in a more fluid, connected script.

United States Magistrate Judge